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**AUG - 8 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

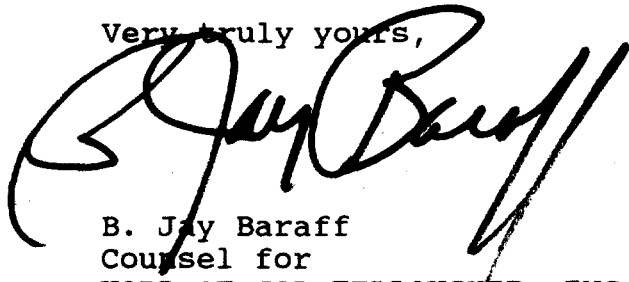
Re: CS Docket No. 94-42

Dear Mr. Caton:

Transmitted herewith on behalf of Word of God Fellowship, Inc., licensee of television Station KMPX, Decatur, Texas, are an original and four (4) copies of its "Reply Comments" in the above-referenced proceeding.

Please communicate with me should any question arise relative to this matter.

Very truly yours,



B. Jay Baraff  
Counsel for  
WORD OF GOD FELLOWSHIP, INC.

BJB:bpt  
Enclosures  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

AUG - 8 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

)  
Amendment of Section 76.51 of the )  
Commission's Rules to Include )  
Decatur, Texas in the Dallas- )  
Fort Worth, Texas Television )  
Market )

CS Docket No. 94-42

To: Chief, Cable Services Bureau

REPLY COMMENTS

WORD OF GOD FELLOWSHIP, INC.

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## SUMMARY

The Commission should grant the request of Word of God Fellowship, Inc. ("WOGF"), licensee of KMPX(TV), Decatur, Texas, to add Decatur, Texas, to the Dallas-Fort Worth, Texas, television market. It has been demonstrated by WOGF in its June 14, 1994, comments, as augmented herein, that the standards enunciated by the Commission in its various decisions renaming major markets have been met, including, but not necessarily limited to, showings of proximity; propinquity; and equity.

The objections raised in comments by the parties adverse to this petition have failed to demonstrate that "significant-viewing" would be a viable alternative to the problems faced by KMPX, nor have they shown that the impact on them merits special Commission consideration in the form of denial of legitimate relief to KMPX. The alternative of providing extended protection to the commenters would not be objected to by WOGF, although it would leave that matter entirely up to the Commission.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 76.51 of the	)	CS Docket No. 94-42
Commission's Rules to Include	)	
Decatur, Texas in the Dallas-	)	
Fort Worth, Texas Television	)	
Market	)	

To: Chief, Cable Services Bureau

**REPLY COMMENTS**

Word of God Fellowship, Inc. ("WOGF"), petitioner in the above-captioned proceeding and permittee of KMPX(TV), Decatur, Texas ("KMPX"), by counsel, hereby submits its "Reply Comments" in the above-captioned proceeding. It is WOGF's position that the Comments filed jointly on July 7, 1994, on behalf of four TV stations in the Wichita Falls, Texas-Lawton, Oklahoma market<sup>1</sup> and by James Cable Partners ("James Cable"), a cable operator with several cable systems in the proximity of Decatur, have failed to demonstrate that WOGF's petition should be denied.

**PRELIMINARY STATEMENT**

Initially, it should be pointed out that in its Comments, filed with the Commission on June 14, 1994, WOGF addressed the areas of concern delineated by the Commission in its Notice of Proposed Rulemaking in this proceeding (DA 94-461, released

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<sup>1</sup>Those stations are KFDX-TV, KAUZ-TV and KJTL(TV), all Wichita Falls, Texas, and KSWO-TV, Lawton, Oklahoma.

May 16, 1994). That was done in a systematic and persuasive manner, and was attested to by Marcus Lamb, President of WOGF.

In stark contrast, statements by James Cable (Comments, page 5) as to the potential economic impact on it should it be required to provide non-duplication protection to the Dallas and Fort Worth stations are totally speculative, and were not accompanied by a statement from anyone with personal knowledge. That is also true of the stations' economic impact claim at pages 7-8 of their Comments. As such, their assertions should be rejected as being unsubstantiated by affidavit or declaration. More importantly, there is no probative documentary evidence to reflect that even if the costs or impact were realistic, James Cable's systems or the stations would in any way be significantly negatively impacted. Many systems provide non-duplication protection to many television stations, and it is a normal and routine cost of doing business in the cable industry. Indeed, the same problem often arises when new TV stations are put on the air, and new smaller market zones are created. Thus, systems that once carried stations without concern for program protection may for the first time find that they must provide it. Clearly, the Commission would not discontinue the grant of new stations, nor should it consider deferring the realignment of its markets, because of possible financial impact on cable operators or existing stations which have in no way documented the scope of the impact. In that regard, absent any financial data on their operations, there is no way to assess the impact

in any event, and the claim of adverse impact must be disregarded.<sup>2</sup>

#### **KMPX' SERVICE TO DECATUR**

The commenting parties have sought to focus on what they assert is an abandonment by KMPX of Decatur, its city of license. These assertions are as inaccurate as they are invalid and speculative. They are also belied by the obligations that the FCC imposes on KMPX as to its city of license. The commenting parties misconstrue the relevance of a station's antenna location to its service obligation to its city of license. This issue has long since been dispositively handled by the Commission. Thus, in its Report and Order in BC Docket 82-320, FCC 83-81, 53 RR 2d 681 (1983 "Report and Order"), the Commission dealt with so-called de facto reallocation issues. Clearly, this is the issue the commenters herein are attempting to raise when they assert that KMPX will serve Dallas-Fort Worth rather than Decatur. This assertion should be rejected for the reasons enunciated by the Commission over eleven years ago. The Commission noted (Report and Order, paragraph 35) that the policy "... is most often invoked against small market stations. The frequent

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<sup>2</sup>It should also be pointed out that James Cable does not carry all of the Wichita Falls-Lawton stations on each of its six headends. Indeed, in Decatur, Bridgeport, Alvord and Chico, it carries only KAUZ-TV. In Jacksboro, it does not carry KSWO-TV. Thus, it would appear that its suggestion that it would cost at least \$3,000.00 per headend for switching equipment (James Cable Comments, page 5) is inflated as is its unsubstantiated gross figure of \$100,000.00.

proponents of the policy are licensees located in larger communities who will face increased competition as a result of an application to modify or improve facilities filed by licensees in nearby smaller communities." Here, in addition to competition, the stations and James Cable may face some minor inconvenience.

Further, in General Media TV, Inc., 27 FCC 2d 861, 863, 21 RR 2d 334 (1971), the Commission declined to prohibit a small station in Gary, Indiana, from serving large portions of Chicago, while simultaneously providing primary service to Gary. The same is true here: KMPX has met all required Commission criteria or obviously it would not be licensed to Decatur. Its obligations to provide service to that community are in no way impacted by the relief sought herein, which is a request that Decatur be included in a market, not that KMPX be licensed to Dallas or Fort Worth. Its obligations to serve Decatur are being and will continue to be fulfilled and there has been no credible evidence whatsoever presented that that is not or will not be the case. But it is axiomatic that a station maximizing its reach is in the public interest, as the programming it provides becomes available to larger numbers of people, some of whom will hopefully -- and almost certainly -- benefit from it.

In all events, KMPX has met the Commission's technical criteria, and that is what it was required to do. Its programming and public service obligations are independent of

that fact. However, it is also inaccurate to suggest that the singular focus of WOGF has been to become a Dallas station. Indeed, on March 9, 1989, WOGF sought to modify its construction permit in order to move from a tall tower 10 miles from Decatur to a far shorter tower in Decatur. (The original tower site had been lost). However, by letter of November 27, 1989, from Clay Pendarvis, Esq., then and now a senior official in the Mass Media Bureau, an issue was raised as to a "major reduction" in service by KMPX. The Commission declined to grant the application and thus KMPX, eagerly attempting to become operational, located and filed for its current and compliant site, which was granted by the Commission and from which it now operates.

Moreover, it should be noted that the original construction permit granted for KMPX (issued to Decatur Telecasting, Inc.), specified the above-mentioned tower site about 10 miles due north of Decatur. Thus, it was further from Dallas and Fort Worth than is Decatur. Yet even in that situation, the construction permit projected a Grade B signal over all of Fort Worth and a substantial portion of Dallas. A transmitter in the middle of Decatur would of course have put a substantially stronger signal over both communities.

#### **COPYRIGHT/PROGRAMMING MATTERS**

The suggestion by James Cable that the Commission should take no action because there is pending legislation to modify the copyright law to possibly eliminate adverse copyright

implications for carriage of KMPX within its ADI is speculative at best and disingenuous at worst. Effectively, under the reasoning advanced by James Cable (Comments, pages 2-3), the Commission should essentially impose a freeze on any and all efforts to add cities to existing markets, thereby ignoring the mandate of the 1992 Cable Act, which requires the Commission to revise and update the list of top 100 television markets.<sup>3</sup> There is an obligation for the Commission to act on these matters, and it is one that the Commission has recognized in a substantial number of recent and similar cases seeking redefinition of markets, largely requested by smaller market TV licensees to avoid adverse copyright implications. By way of limited example, the Commission has added Rome, Georgia, to the Atlanta market (7 FCC Rcd. 8591 (1992)); Chillicothe, Ohio, to the Columbus market (

); Pine Bluff, Arkansas, to the Little Rock market (MM Docket No. 93-233, DA 93-1429 (1993)); Riverside, California, to the Los Angeles-San Bernardino-Corona-Fontana, California, market (MM Docket No. 93-207, DA 93-1444 (1993)); Clearwater, Florida, to the Tampa-St. Petersburg, Florida, market (MM Docket No. 93-218, DA 93-1477 (1993)); and Lawrence, Massachusetts, to the Boston-Cambridge-Worcester, Massachusetts, market (MM Docket No. 93-291, DA 94-425 (1994)).

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<sup>3</sup>See Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992).

The Commission can determine on its own that in some of these cases, and certainly in the earlier case in which the Commission added Clermont to the Orlando-Daytona Beach-Melbourne-Cocoa Beach, Florida, market (MM Docket No. 92-306, DA 93-579 (1993)), the distances involved between the existing cities comprising the market and the new city have exceeded the distance between Decatur and Fort Worth or Dallas (28 and 39 miles, respectively).

While the parties have argued that KMPX should solve its copyright-related problems by seeking to obtain significantly-viewed status, the Commission's own processes (Rule 76.54(d)) establish a period of three years after the implementation of new TV service during which such status can be shown on a county basis. It is not an "immediate" process, and moreover, a station such as KMPX which is Christian and family oriented in its programming, obviously is a "niche" station. To attain a net weekly circulation level of five percent and a share of two percent is a difficult task for such stations, and few if any Christian-oriented stations have done so over the years. Further, the significant viewing alternative could have been suggested in any of the market change cases before the Commission, but it is not a reasonable and fair alternative.

Clearly, once there is no copyright payment impediment to cable carriage of KMPX, it will be in a far stronger position to do whatever is needed to improve its signal in those limited cases where the signal at the affected cable system's

headend may not meet Commission criteria. It is simply untrue, as asserted by James Cable, that it is signal strength that keeps many cable systems from carrying KMPX. It is estimated that 90 percent of the 550,000 "distant" cable subscribers in the ADI can be served by KMPX with a very strong signal at the headend sites of their cable suppliers. The approximately other 10 percent will be able to do so when KMPX devotes its resources to alternative means of providing the signal such as microwave, translators or high gain receive antennas which it will provide. But the copyright issue must be resolved first before that money is spent for equipment for the 10 percent of affected cable operators.<sup>4</sup>

The issue before the Commission is not only that of the disincentive for cable operators to carry a station which implicates copyright payments (which apply even to distant UHF and specialty stations), but there are other considerations as well. Programming will not be available to KMPX on any basis that it can afford if it is not entitled to be considered a

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<sup>4</sup>The assertion of the stations that adding Decatur to the Dallas-Fort Worth market would not solve its copyright-related problems assumes far too much. Indeed, in R&R Media Corporation, DA 94-476 (Cable Services Bureau, released May 27, 1994), the Commission, while noting that the Copyright Office is studying how to handle newly-hyphenated cities, indicated that: "Pending the conclusion of this proceeding [emphasis added by FCC], the Copyright Office will not question the designation of local signal status based on the FCC's action to rename one or more of the major television markets." This is a fairly strong signal that the Copyright Office's disposition is that it will confer copyright exemption on the specified 35 mile zones of newly-added cities.

part of the market and thus be able to obtain exclusivity therein. Clearly, a station licensed to Decatur (a city with a population of under 5,000) could not afford to pay major market prices to compete for programming, for which it may not receive competitive exclusivity.

#### **THE MOTIVE OF THE COMMENTERS**

The Commission should be aware that the underlying and real issues bothering commenters herein concern their ability to continue to receive program protection on the one hand, and to avoid providing it on the other. WOGF does not deny that if its petition is granted, James Cable may have to provide additional program protection to Dallas-Fort Worth stations against more distant signals, and that the stations in the Wichita Falls-Lawton market may have some of their duplicated programs deleted.<sup>5</sup> But the impact on the stations is not different from what it was in other similar cases. For example, in Cedartown, Polk County, Georgia, which is within 35 miles of Rome, Georgia, but more than 35 miles from Atlanta, the system carries major network affiliates from both

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<sup>5</sup>It should be noted that the commenting stations themselves receive extensive protection rights since they are part of a hyphenated market in which the core cities are over 50 miles apart... considerably greater than the separation of Decatur from Dallas or Fort Worth. Indeed, in CSR-3613, involving cable systems at Duncan and Marlow, Oklahoma, KFDX-TV asserted program protection rights even though Wichita Falls, Texas, is over 55 miles from Marlow, Oklahoma.

Also, the stations should perhaps take their own advice and establish their own significant viewing in areas where their programs will become subject to deletion.

Atlanta and Chattanooga and Birmingham. Since the Chattanooga and Birmingham stations are not significantly viewed in Polk County, it would appear that the Atlanta stations will pick up program protection rights against those stations. Similarly, Jackson, Jackson County, Ohio, is within 35 miles of Chillicothe but more than 35 miles from Columbus. The Jackson cable system carries the three major network affiliates from Charleston-Huntington, West Virginia, as well as from Columbus, and the Charleston stations may now lose their protection rights. But these routine situations in no way dissuaded the Commission from granting the relief mandated in the '92 Cable Act to the Chillicothe station, even as it should not impede the Commission in granting the relief sought herein by KMPX. Indeed, the solution is not denial of the instant petition, but perhaps the provision of grandfathering rights to the stations and to James Cable and the waiver of any obligation that James Cable must protect Dallas-Fort Worth stations in the 35 mile zone that Decatur will add to the market, as well as to allow the stations to continue to avoid having their programming deleted where it is currently carried. That is a more equitable result, and WOGF interposes no objection to it.

**KMPX HAS MET THE COMMISSION'S STANDARDS**

The Commission has enunciated certain standards which stations such as KMPX must satisfy to be included in a top-100 market. As noted above (pages 1-2), in WOGF's comments

herein, the Commission has been provided with relevant mileage data concerning the distance between the cities of Dallas and Fort Worth and Decatur. It was also provided with the relevant contours of the market stations. It has been shown that KMPX is being severely handicapped at the present time, both in terms of its inability to be carried on many cable systems within its ADI and its inability to acquire programming on an equitable basis. The sum total of those showings is a clear demonstration that the public interest will be well served by providing the relief sought herein, so that KMPX can become a more viable station, providing its unique blend of programming to this market.

#### **CONCLUSION**

In summary, the standards enunciated by the Commission in TV 14, Inc. (Rome, Georgia), 7 FCC Rcd. 8591, 8592 (1992), have been satisfied by WOGF. KMPX is a small and struggling UHF station, which seeks only to level the playing field to allow it to develop into the valuable market asset that it believes -- indeed knows -- that it can become. But because of the reality of how programming is distributed and sold by program syndicators and owners; because of the very adverse impact on cable carriage in not being part of the Dallas-Fort Worth market; and in order to be in a position to maximize and improve service to those few cable systems within the ADI where its signal may not quite meet established FCC criteria,

grant of the instant petition is urgently required and requested in the clearest public interest.

Respectfully submitted,

WORD OF GOD FELLOWSHIP, INC.

By:

  
B. Jay Baraff  
Its Counsel

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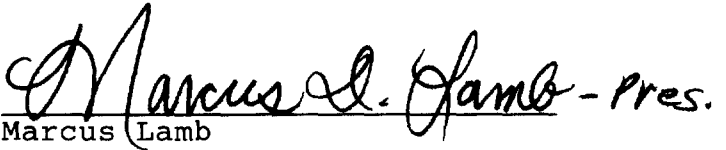
**(202) 686-3200**

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**DECLARATION**

Marcus Lamb, President of Word of God Fellowship, Inc., hereby states that he has reviewed the foregoing Reply Comments and has provided a substantial amount of the factual data contained therein, all of which are true to the best of his information, knowledge and belief. This Declaration is made under penalty of perjury.

Date: August 5, 1994

 - Pres.  
\_\_\_\_\_  
Marcus Lamb

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**CERTIFICATE OF SERVICE**

I, Barbara P. Taylor, a secretary in the law firm of Baraff, Koerner, Olender & Hochberg, P.C., do hereby certify that a true copy of the foregoing document was sent this 8th day of August, 1994, by first class United States mail, postage prepaid, to the following:

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